



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: APRIL 04, 2023

IN THE MATTER OF:

Appeal Board No. 627566

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 627566, 627567 and 627568, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed January 20, 2023, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective October 17, 2022 through October 23, 2022, on the basis that the claimant did not comply with work search requirements; charging the claimant with an overpayment of \$323.00 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4);

and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

In Appeal Board No. 627566, based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant had worked doing babysitting for approximately 26 years. She filed an online claim for unemployment insurance benefits on September 6, 2022, effective September 5, 2022. When

filing her claim, she was advised that she was responsible for reading and following all information in the handbook but she chose not to have the claimant information handbook mailed to her. The handbook stated that the

claimant must make systematic and sustained efforts to find work and must provide proof of the work search to the Department of Labor upon request. The handbook further stated that for each week she claims benefits the claimant must keep an online or written Work Search Record containing, among other things, the dates, names, addresses and telephone numbers of employers contacted, as well as the names and/or job titles of specific persons contacted. If the Department of Labor asks to see the claimant's work search records, the claimant is required to provide copies to the Department of Labor. The handbook specifies that if the Work Search Record is kept in written form, rather than online in JobZone, the Work Search Records are to be kept for one year. Around the middle of October 2022, the claimant read the handbook including those sections.

For the week of October 17, 2022 through October 22, 2022, the claimant engaged in work search efforts. She did not keep a record of her work search activities.

On November 1, 2022, the Department of Labor mailed a letter to the claimant directing her to submit her work search record and supporting documentation for the period of October 17, 2022 through October 23, 2022. Around November 2022, the claimant was experiencing a small problem with the receipt of her mail and she did not receive the letter.

**OPINION:** The credible evidence establishes that the claimant failed to comply with work search requirements. Although the claimant contends that she did not receive the letter from the Department of Labor requesting her to submit her work search record and supporting documentation for the statutory week of October 17, 2022 through October 23, 2022, it is significant that the claimant admitted that she did not keep a record of her work search activities. At the time of filing her claim for benefits, she was placed on notice that she is responsible for reading the claimant information handbook and for following the information contained in the handbook. The handbook advised the claimant that she is required to keep an online or written work search record; that she must keep any written work search record for one year; and that she must provide copies of the work search record to the Department of Labor if she is asked to provide it. As the claimant did not keep a written work search record, and there is no contention that she saved a work search record for that week online, the claimant has failed to comply with the work search requirements.

With respect to Appeal Board Nos. 627567 and 627568, our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the issues of overpayment of benefits and willful misrepresentation to obtain benefits, including forfeit penalty and civil penalty. Specifically, these issues are based on the claimant's statement made on October 23, 2022 that she complied with work search requirements. The Commissioner of Labor should appear by representative and should produce a legible copy of the certification statement on the Review of Responses page of Hearing Exhibit 7. The claimant should be confronted with this certification statement. The parties shall be afforded the opportunity to provide further testimony and evidence and the Judge shall take further testimony and evidence from the parties as the Judge deems appropriate.

DECISION: In Appeal Board No. 627566, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 627566, the initial determination, holding the claimant ineligible to receive benefits, effective October 17, 2022 through October 23, 2022, on the basis that the claimant did not comply with work search requirements, is sustained.

In Appeal Board No. 627566, the claimant is denied benefits with respect to the issues decided herein.

In Appeal Board Nos. 627567 and 627568, the decisions of the Administrative Law Judge are rescinded.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board Nos. 627567 and 627568, the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of recoverable overpayment of benefits and willful misrepresentation to obtain benefits, including forfeit penalty and civil penalty, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of recoverable overpayment of benefits and willful misrepresentation to obtain benefits, including forfeit penalty and civil penalty, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER